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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,413	03/21/2001	Larry Davis	56139998-2	2395
26453	7590	04/20/2006	EXAMINER	
BAKER & MCKENZIE LLP			BRAHAN, THOMAS J	
1114 AVENUE OF THE AMERICAS			ART UNIT	
NEW YORK, NY 10036			PAPER NUMBER	

3654

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/813,413	DAVIS, LARRY	
	Examiner	Art Unit	
	Thomas J. Brahan	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-20 and 22-32 is/are pending in the application.
- 4a) Of the above claim(s) 22-24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7, 8, 15, 16, 19, 20 and 25-32 is/are rejected.
- 7) ☒ Claim(s) 9-14, 17 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3654

1. The following is a quotation of the second paragraph of 35 U.S.C. § 112:
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.
2. Claims 2-4 and 25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - a. It is unclear as to how claim 1 can recite that the basket rests on the uppermost surface of the support members, and claim 2 can recite that the outriggers attached to the basket are supported on the support members. Claim 2 should be amended to state that the outriggers are part of the basket, not attached thereto.
 - b. In claim 25, the term "the second support member" lacks antecedent basis within the claim.
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:
A person shall be entitled to a patent unless --
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
4. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.
5. Claims 1-5, 15, 19, 25-27, 29 and 30 are rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as being unpatentable over, Matsumoto et al. Figure 47 of Matsumoto et al shows a tower crane device comprising:
 - a basket (13) supporting a tower crane (511);
 - a plurality of support members (horizontal beams) with each support member directly attached to one of a plurality of respective columns of a structure under construction, wherein
 - the plurality of vertical steel columns includes at least three vertical columns,

Art Unit: 3654

each support member (horizontal beam) has an uppermost surface, and the basket rests on the uppermost surface of the plurality of support members.

Although the columns of Matsumoto et al are shown as being of the type which are steel columns, the reference does not mention a material. If the drawings are not relied as showing of steel columns, it would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to use the crane of Matsumoto et al with steel columns since this is conventional, and it has been held to be within the general skill of a worker to select a known material on the basis of suitability for the intended use as a matter of obvious design choice, see *In re Leshin*, 125 USPQ 416. The guides (18) are outriggers attached to the basket, as recited in claim 2, which clamp when securing the basket to the support members, see figures 2-4, as recited in claim 3. Portions of the outriggers can be considered as feet, as recited in claims 4 and 15. The support members are in pairs as to be positioned at right angles to each other with the feet of basket on a pair of the support members, as recited in claims 5, 25, 26, 29 and 30. The feet rest on and are in compression with upper surfaces of the support members, as recited in claims 19, 26 and 27.

6. Claims 1, 2, 4, 5, 7, 8, 15, 16, 19, 20, 25 and 28-30 are rejected under 35 U.S.C. § 102(b) as being anticipated by, or in the alternative under 35 U.S.C. § 103(a) as being unpatentable over, Rauch et al (cited by applicant). Rauch et al shows a tower crane device comprising:

a basket (33/34/36 36) supporting a tower crane;

a plurality of support members (71-74) with each support member directly attached to one of a plurality of respective columns (70) of a structure under construction, wherein

the plurality of vertical steel columns includes at least three vertical columns,

each support member (71-73) has an uppermost surface, and


the basket rests on the uppermost surface of the plurality of support members.

The columns of Rauch et al are shown as being of the type which are steel columns, if the drawings are not relied as showing of steel columns, it would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to use the crane of Rauch et al with steel columns since this is conventional, and it has been held to be within the general skill of a worker to select a known material on the basis of suitability for the intended use as a matter of obvious design choice, see *In re Leshin*, 125 USPQ 416. Rauch has outriggers (16) with feet, as recited in claims 2, 4, 15 and 16. The support members are in pairs as to be positioned at right angles to each other, as recited in claim 5. Rauch et al has an upper frame (27/28/44/54) with a larger diameter than the lower frame (33/34) with coupling arms (39) extending towards some of the support members (71-73), as recited in claims 7 and 16. The feet rest on and are in compression with upper surfaces of the support members, as recited in claim 19. Part of the upper frame (44/54) can also be considered as a second basket which slides with respect to the tower and also rests on support members, as recited in claims 8, 20 and 28. The baskets each rest on two support members, as recited in claims 31 and 32.

Art Unit: 3654

7. Applicant's remarks in the amendment filed January 20, 2006, have been fully considered, but are deemed moot in view of the above new rejections. The late citation of the Matsumoto et al reference and the withdrawal of previously indicated allowable subject matter is regretted.

8. An inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Brahan whose telephone number is (571) 272-6921. The examiner's supervisor, Ms. Katherine Matecki, can be reached at (571) 272-6951. The new fax number for all patent applications is (571) 273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions regarding access to the Private PAIR system, should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Thomas J. Brahan
Primary Examiner
Art Unit 3654